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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7469 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

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NAVA NARODA GRAM PANCHAYAT

Versus

RAJUBHAI SOMABHAI BHARWAD

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Appearance:

MR BN RAVAL for Petitioner

MR MUKUL SINHA for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 30/07/98

ORAL JUDGEMENT

Nava Naroda Gram Panchayat has filed the present

petition to challenge the award passed by the Labour Court, Ahmedabad in Reference No. 531 of 1996.

2. Respondent-Rajubhai S. Bharwad was appointed as a Mukadam by the petitioner Gram Panchayat on 21.5.95. As said Mukadam respondent no.1 was dismissed from service by an oral order dated 23.1.96 he had raised an industrial dispute which resulted into Reference No. 531 of 1996. When the said Reference was pending before the Labour Court, Ahmedabad it seems that on 24.7.1997, a compromise purshis jointly signed by the workman and the Sarpanch of the Gram Panchayat was filed before the Labour Court. By the said joint purshis it was agreed between the parties to reinstate the respondent with full back wages and it was further mentioned in the said purshis that he was to be reinstated as a clerk.

3. The Gram Panchayat has filed the present petition contending that said compromise executed by the Sarpanch was without any authority and that there was no Resolution of the Panchayat authorising the Sarpanch to execute such settlement and compromise and therefore, the award passed on the strength of the said compromise is illegal and invalid. It is further contended that the respondent was selected as a Mukadam and he was holding the post of Mukadam on the date of his termination and therefore, he could not be reinstated as clerk i.e. a higher post.

4. There is no dispute of the fact that the compromise recorded before the Labour Court has been executed by and on behalf of the Panchayat by the Sarpanch and the workman. It is very pertinent to note that in the original petition there is no mention that said compromise was entered into by the village Sarpanch on account of any fraud or misrepresentation played against the Sarpanch on account of any undue influence against the Sarpanch. There is no dispute of the fact that in the Reference before the Labour Court, the Panchayat was a party. When the Panchayat was made a party, Sarpanch of the said Panchayat will be representing the said Panchayat before the Labour Court. If the provisions of section 55 of the Gujarat Panchayats Act are concerned, then it would be quite clear that the Sarpanch has got all the executive powers. Therefore, in view of the said provisions of section 55, if the Sarpanch signs the compromise purshis it could not be said that said signing of him is without any authority or power. In addition to section 55 it is necessary to refer to the provisions of section 2-G of the ID Act.

Said section 2-G in sub-clause 2 mentions that employer means in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority. Therefore, if the said definition of the employer in the light of Gram Panchayat is taken into consideration, then it would be quite clear that Sarpanch being the Chief Officer is the employer of the workman and a compromise executed between the employer and the workman would be valid and legal and enforceable in law. Therefore, in the circumstances the contention raised on behalf of the petitioner that the Panchayat had no statutory authority to execute and sign the compromise is without any material and foundation and therefore, the same deserves to be rejected.

6. It is vehemently urged before me by Mr. Raval learned advocate for the petitioner that the respondent no.1 was selected as Mukadam and he was also holding the post of Mukadam at the time of his alleged retrenchment. Therefore, in the circumstances, by a compromise, he cannot be posted on a higher post of a clerk. When a workman is going before the Labour Court with a claim that he has been wrongly and illegally retrenched, he is entitled to get at the most reinstatement in the same post which he was holding at the time of his alleged retrenchment and to get the back wages from the date of removal till the date of reinstatement. Therefore, though in the said compromise initially it has been mentioned that he was holding the post of Mukadam and through in the subsequent portion of the compromise purshis it has been mentioldned that he should be reinstated as clerk, it will have to be concluded and read that he is to be reinstated as Mukadam and not as a clerk. Therefore, while interpreting the said award of the Labour Court on the strength of the compromise purshis, it is open for the Panchayat to reinstate the respondent to the post of Mukadam, a post which he was holding at the time of his retrenchment and merely because in the compromise purshis the word 'clerk' is used, respondent will not be entitled to get the post of clerk. In my opinion only this clarification in the terms of the said compromise which has formed part of the award of the Labour Court is required.

7. After the arguments of both the parties were heard, opportunity was given to the learned advocate for the petitioner to produce documents to show as to what was the post held by the respondent workman at the time of his alleged retrenchment. The petitioner has today come with a prayer for allowing the draft amendment. By the said amendment, he wants to change the nature of the

petition which the petitioner had not initially made in the original petition. The amendment which seeks to alter the claim of a party and to make out a new case and that too after the arguments are heard could not be permitted. I therefore, do not allow the amendment sought by the petitioner.

8. Thus I hold that the award in question could not be said to be illegal or invalid. I am considering the award by exercising powers under Articles 226/227 of the Constitution of India. When the award is passed on the strength of a compromise purshis jointly executed by the Panchayat and the workman before the Labour Court and when its correctness are admitted before the Labour Court and if the Labour Court passed an award on the strength of the said compromise, it could not be said that the Labour Court has committed any illegality or perversity so as to interfere with the same by exercising the powers under Articles 226/227 of the Constitution of India. I am not considering the larger aspect about the powers of Sarpanch qua the Panchayat because I am not concerned with the same in this petition. Similarly what action is to be taken by the PANCHAYAT against the Sarpanch for signing said compromise need not be also considered by me or decided by me. Therefore, I am not making any observations about the same. With these observations, the petition stands dismissed with no order as to costs.

The Panchayat is directed to execute the award within four weeks by giving reinstatement to the respondent workman. The Panchayat should pay the back wages within three months from today.

(S.D.Pandit.J)